June 9, 1999

Mr. Don Ballard
Open Records Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-1620

Dear Mr. Ballard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123990.

The Office of the Attorney General (the "OAG") received a request for all documents related to every claim for compensation with the Texas Crime Victims Compensation Fund for a specific victim. You assert that the requested information is excepted from disclosure under section 552.108 of the Government Code in conjunction with the Crime Victims' Compensation Act and under section 552.101 of the Government Code in conjunction with the Medical Practices Act (the "MPA"), section 5.08(b) of article 4495-b of Vernon's Texas Civil Statutes. You submit to this office a memorandum and representative samples of the requested information from the Crime Victims' Compensation Division of the Office of the Attorney General (the "CVC").[1] We have considered the exceptions you claim and reviewed the submitted information.

CVC asserts that article 56.09 of the Code of Criminal Procedure protects the victim's phone numbers from disclosure. Article 56.09 of the Code of Criminal Procedure provides:

> [a]s far as reasonably practical, the address of the victim may not be a part of the court file except as necessary to identify the place of the crime. The phone number of the victim may not be part of the court file.

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[1] We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit a representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code Crim. Proc. art. 56.09. The language of the statute limits the information to be placed in the court's file. It does not deem information confidential or restrict the information in any location other than the court file. Therefore, you may not withhold the victim's phone number.

CVC asserts that some of the requested information is protected by section 552.108 of the Government Code. Section 552.108(a) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if (1) release of the information would interfere with the detection, investigation, or prosecution of crime." CVC has provided to this office a letter from the office of the district attorney for Denton County that states that this case is open and pending criminal prosecution. Based on the attorney general's right of access under article 56.38(d) of the Code of Criminal Procedure and the statement of the Denton County District Attorney that the requested information pertains to a case in which there is a pending prosecution, CVC may withhold some of the requested information under section 552.108. Attorney General Opinion H-917 (1976); Open Records Decision No. 516 (1989). However, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). We believe that "basic information" refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You must release basic information about the crime to the requestor.

CVC also contends that some of the requested information, including some of the basic information about the crime, is protected by common-law privacy. Common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person *and* the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Open Records Decision No. 611 at 1 (1992). Section 552.101 of the Government Code encompasses common-law privacy and excepts from disclosure private facts about an individual. *Indus. Found.* 540 S.W.2d 668.
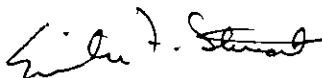
In Open Records Decision No. 262 (1980), this office stated that information about a patient's injury or illness might be protected under common-law privacy if such injury or illness relates to drug overdoses, acute alcohol intoxication, gynecological or obstetrical illness, convulsions and seizures, or emotional and mental distress. *See also* Open Records Decision No. 539 at 5 (1990) (information concerning emotional state may be protected by common-law privacy). Portions of the requested information are protected from disclosure by the individual's common-law right to privacy. We have marked portions of the requested information to indicate the type of information that you must withhold from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We note that the crime victim's social security number appears on several of the requested documents. Amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), incorporated into the Open Records Act by section 552.101, make confidential social security numbers obtained or maintained by authorized persons pursuant to any provision of law enacted *on or after October 1, 1990.* Open Records Decision No. 622 at 2-3 (1994). Thus, if the crime victim's social security number was obtained or maintained pursuant to any such provision of law, the number is confidential and may not be publicly disclosed.

CVC also raises section 552.111 of the Government Code to protect from disclosure one of the documents at issue. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. The information for which you assert section 552.111 is purely factual and may not be withheld from disclosure under section 552.111.

Having ruled on the information at issue under section 552.108 and section 552.101 in conjunction with common-law privacy, we need not address your additional argument against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS/nc

Ref.:   ID# 123990

Encl.   Marked documents

cc: Mr. Rick Hagen
          Jackson & Hagen
          100 W. Oak, Suite 302
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          (w/o enclosures)